



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 14, 1993

Ms. Rachel Martin  
Executive Director  
The Supreme Court of Texas  
Board of Law Examiners  
P.O. Box 13486  
Austin, Texas 78711-3486

OR93-308

Dear Ms. Martin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19436.

The Board of Law Examiners (the "board") has received a request for information relating to the administration of state bar examinations. Specifically, the requestor seeks "access and copies to the [examination] booklets of July 91 and July 92"; the identities of the persons in possession of information relating to the educational background and expertise of the bar examination graders; information relating to the educational background and expertise of the bar examination graders; information indicating which examinations board members graded in July 1991 and July 1993 and which examinations were not graded by board members; a written analysis of the performance on the examinations of July 1991 and July 1992; and "information supplied by persons who supplied information and requested that it not be disclosed." You advise us that you have released some of the requested information, but object to release of the remaining information.

We first address your contention that you are not required to consult with each board member in order to determine whether the members might have information responsive to this request. Please note that it is the board's duty to make a good faith effort to determine what documents in its custody are responsive to the request. Open Records Decision No. 561 (1990) at 8; *but see* Attorney General Opinion JM-672 (1987) (Open Records Act does not require governmental body to arrange or organize information in a particular manner); Open Records Decision Nos. 555 (1990) (governmental body not required to respond to general inquiries); 243 (1980) (governmental body is not required to compile or extract information if it can be made available by giving the requestor access to the records themselves). Thus, for example, if you had reason to believe that the requested information might be in the possession of a

board member, a good faith effort would require you to consult with that board member in order to determine whether he has information responsive to the request. *See* ORD-332 (1982) (letters sent to board members concerning teacher's performance are subject to disclosure).

You also contend that the Open Records Act does not apply to records regarding official business when no statute requires the generation or maintenance of such records. We disagree. Because the Open Records Act applies to "[a]ll information collected, assembled, or maintained by or for governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information, pursuant to law or ordinance *or in connection with the transaction of official business*," V.T.C.S. art. 6252-17a, § 3(a) (emphasis added), information provided the board members in their official capacities "in connection with the transaction of official business" is subject to the Open Records Act. As noted above, it is the board's duty to make a good faith effort to determine whether it possesses information responsive to the request. Of course, if you determine that the board does not hold information responsive to the request, the Open Records Act does not require you to obtain it, create it, or disclose it. *See* Open Records Decision Nos. 558 (1990); 362 (1983).

Finally, we address your contention that the requested examination booklets are excepted from required public disclosure under the terms of an Order of the Supreme Court dated July 7, 1987, which construes section 82.003 of the Government Code. Subsection 82.003(b) provides in part:

(a) Except as provided by Subsections (b) and (c), the Board of Law Examiners is subject to the open records law . . . , and the open meetings law . . . .

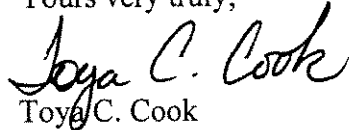
(b) Examination questions that may be used in the future and examinations other than the one taken by the person requesting it are exempt from disclosure.

The Texas Supreme Court, pursuant to the authority granted it in section 82.022(b) of the Government Code, issued an order on July 7, 1987, designed to clarify the provisions of sections 82.003. In pertinent part, the order exempted from disclosure under the Open Records Act an examinee's answers, but not an applicant's own grades unless his grades are being withheld pending the resolution of an investigation into the applicant's moral character and fitness. A letter from Justice William Kilgarlin, former supreme court liaison justice to the board, to the board's former executive director expressly states that the scope of the July 7, 1987, order encompasses a "[r]equest by an examinee for a copy of his essay answers on the Bar Examination." Thus, the requestor's examination booklets, to the extent that they contain the examinee's answers, are clearly excepted from required public disclosure by section 82.003(b) as clarified by the Texas Supreme Court's order of July 7, 1987. Accordingly, we conclude that this information must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. The

requestor's examination grades and results, however, to the extent that they are contained in the examination booklets, are not excepted by section 3(a)(1) of the Open Records Act and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink that reads "Toya C. Cook". The signature is fluid and cursive, with the first name "Toya" being more prominent.

Toya C. Cook  
Assistant Attorney General  
Opinion Committee

TCC/GCK/le

Ref.: ID# 19436

cc: Mr. Roman Perales  
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